

August 9, 2007

Mark Holsten, Commissioner Minnesota Department of Natural Resources 500 Lafayette Road St. Paul, MN 55155	
---	--

**Re: *In the Matter of the Appeal of the Trespass Citation Issued to
Bryan J. Kittleson (Juvenile);
OAH Docket No. 7-2000-19029-2, Citation #154564***

Dear Commissioner Holsten:

On July 16, 2007, a Prehearing Conference was held in this matter by telephone. Lisa Kittleson, mother of Bryan Kittleson (a juvenile), Bryan Kittleson, and Conservation Officer Jim Tischler participated. During the Prehearing Conference, the parties agreed to submit the matter to me for a decision without further hearing in order to resolve the case, and they each swore or affirmed that the facts as stated to me were true. They are as follows:

On May 12, 2007, Conservation Officer Jim Tischler and a DNR pilot were patrolling the Spider-McKinley Forest Road, located in the Foothills State Forest, in a helicopter several hundred feet above the forest. Officer Tischler observed an orange-colored off-road, all-terrain vehicle leave the road three times and wheel about in wet, muddy areas near the road before coming back upon the road surface, which action left muddy tire tracks on the road surface.

The observation helicopter landed, and Officer Tischler approached the driver of the orange-colored ATV, which was driven by Bryan Kittleson. In addition to having driven the ATV off a state forest road in violation of Minn. Stat. § 84.928, subd. 2(10), the juvenile was driving the ATV without a helmet (an illegal act for anyone under age 18), he was unable to establish that he had completed ATV safety training, another violation of law, and there was no registration number attached to the ATV (also a violation).

Bryan Kittleson does not deny that he was operating an ATV off a designated trail in a limited state forest, in violation of Minn. Stat. § 84.928, subd. 2(10) and Minn. R. 6100.1950, subp. 1.B., which provides that a person shall not operate an all-terrain vehicle on forest roads within forest lands classified as limited, unless such road is not posted and designated as closed. Driving ATVs in areas that are posted and designated to allow such motor vehicle use is permitted, but the area where Bryan Kittleson was operating the ATV was not so posted or designated.

At the location Bryan Kittleson was observed driving off the road near the Spider-McKinley Forest Road in Foothills State Forest, he was, in fact, operating a motor vehicle in an area that was not posted or designated to allow motor vehicle use, within a state forest that was classified as "limited".

Bryan Kittleson and his mother believe that the penalty in this instance, a \$100 fine, should be reduced to a warning because other vehicles in the area were doing the same thing. They argue also (incorrectly) that Bryan believed he was allowed to operate the ATV within a campground area. He was not in such an area, and off-road operation was still illegal unless posting or designation allowed for it.

Officer Tischler was not persuaded, and the Administrative Law Judge agrees, that the serious nature of the violation merits that the Citation be AFFIRMED. IT IS SO RECOMMENDED. Shortly after the Prehearing Conference, Officer Tischler e-mailed a digital photograph to the Administrative Law Judge, a copy of which is being transmitted with this letter and directly by e-mail to the Commissioner, which photo shows clearly the presence of three distinct, fresh-appearing sets of tire tracks. Officer Tischler testified credibly that the tracks were laid down by Bryan Kittleson's ATV, as Tischler watched Mr. Kittleson operate the machine off the road, in some nearby mud, and back onto and/or over the road on three separate occasions.

Bryan Kittleson maintained that he was merely backing the ATV out of its trailer, that the absence of a helmet was only temporary, that the registration tags for the ATV were inside the truck-trailer that had brought the ATV to the area, and that he has completed ATV safety training, but simply did not have proof of that on his person at that point in time. Even if all this is correct, it does not mitigate the severity of Bryan Kittleson's repeated offense of driving the vehicle across the road and into muddy areas, then climbing back up on the road three consecutive times.

Pursuant to Minn. Stat. § 16.072, subd. 6(e), the Commissioner may not issue a final order until at least five days after receipt of the recommendation of the Administrative Law Judge. Bryan Kittleson and/or Lisa Kittleson may, within those five days, comment to the Commissioner, and the Commissioner must consider the comments. Once the Commissioner has made a final decision, a copy of the decision must be served upon Bryan and Lisa Kittleson and the Administrative Law Judge. The final order of the Commissioner may be appealed.¹

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2. The record closes upon the filing of exceptions to this report/letter, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes. I am closing our file in this matter, and returning the record to you.

Very truly yours,

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Telephone: (612) 349-2542

RCL:mo
Encl.

cc: Bryan Kittleson
Lisa Kittleson
Conservation Officer Jim Tischler
Pat Watts, DNR

¹ Minn. Stat. §§ 14.63 to 14.69.